Title.

The question that the Title form part of the Bill was put to vote and carried.

The Title was added to the Bill.

Third Reading.

Mr. Kayalam Parameswaran Pillai : Sir, we are now at the third reading of the Bill. In view of the doubts raised by Mr. Anirudhan, I would propose the following amendment in clause 1.

Clause 1.

Add the following as an Explanation to Clause 1 :

"Explanation : Unless there be anything repugnant in the context, the term *Hindu* used in this Regulation means any person governed by the Hindu Law".

The expression 'Hindu Law' is a technical expression and is well understood and will not be understood to include for example the Malabar Law and persons governed by the Hindu Law form a well defined community and there can be no mistaking about it. If this amendment is accepted, the doubts raised by Mr. Anirudhan will not arise.

Mr. C. Kumara Das : I second it.

Mr. Kottur Kunjukrishna Pillai : I accept it.

The amendment was put to vote and carried.

Mr. Kottur Kunjukrishna Pillai : I move that the Bill, as amended, be passed.

Mr. K. R. Elankath : I second it.

The question that the Bill, as amended, be passed, was put to vote and carried.

The Bill was passed.

THE TRAVANCORE TRANSFERS AND BEQUESTS TO UNBORN PERSONS BILL.

Mr. G. Narayana Aiyar : I move that the Bill be read in Council.

Mr. N. Abdur Rahiman Sahib : I oppose the Bill.

President : It has not been seconded yet.

Mr. Kottur Kunjukrishna Pillai : I second it.

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Mr. G. Narayana Aiyar: Sir, the object of the Bill is given in the Statement of objects and Reasons. Till a few years ago, in British India also, bequests to unborn persons were not recognised by law. In view of the growing sentiments of the community that such bequests should also be allowed, it was considered advisable to have a legislative enactment for the purpose; and, in 1904, a Bill for the purpose was introduced by the late Mr. Seshagiri Aiyar, and it became law. In 1906, the Imperial Government also took it up, and Act 15 of that year was added to the Statute Book. A dispute arose that the Madras Act of 1904 was a provincial legislation and therefore could not extend to the city of Madras; and, to remove that defect, an Act was passed in 1921. It can therefore be seen that throughout India the necessity for legislation in the matter has been recognised.

In Travancore also, our honourable High Court has had occasion to consider this question. In 23 T. L. J., 1187 their honours had to consider the question whether a gift in favour of an unborn child could be given any sort of validity; and they held that such a gift could not be deemed to be valid. They held that it was void. In so holding, their Honours only followed the earlier British Indian Rulings which have all been subsequently abrogated by the legislative enactments that I have already adverted to.

In the Transfer of Property Act also, there was a provision that certain portions of the Act may not apply to Hindus or to Mahomedans. Later on, the necessary changes were introduced in that also.

Sir, the tendency throughout India has been to give absolute freedom in regard to the disposition of one's own property. It is therefore only desirable that we bring our law into line with that in British India.

Sir, the provisions of the Bill consist of 16 Clauses. There is absolutely nothing new in the Bill. The provisions have all been copied from the Transfer of Property Act as also from the Indian Succession Act. Clause 3 defines certain terms. Clause 4 deals with transfer for the benefit of persons not in existence, and legalises it. Clause 5 deals with bequests for the benefit of persons not in existence. Clauses 6 and 7 are practically a reproduction of Sections 13 and 14 of the Transfer of Property Act, namely the well known rule against perpetuity. Clause 8 is a reproduction of Section 15 of the Transfer of Property Act. There are certain decided cases to the effect that if a transfer is made to a set of persons and it turns out to be invalid as against some, it is invalid as against all. The principle of those decisions is said to be

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[Mr. G. Narayana Aiyar.]

unsound. To remedy that evil Clause 8 is added. Clause 9 is more or less a faithful rendering of Section 16 of the Transfer of Property Act. Clause 10 is on the lines of clause 6 of the Bill and in the lines of the Indian Succession Act of 1925 as amended in 1929. Clause 11 is practically a reproduction of Section 114 of that Act. That is the case with regard to Clauses 12 and 13 also. Clauses 14 and 15 correspond to the provisions contained in Sections 18 and 20 of the Transfer of Property Act. Clause 15 gives the right to Government to exempt by notification any section or community from the operation of this Bill if any community so desires. The Mahomedan community also if it so desires may get exemption by means of a notification. Or again the members of those communities for whom exemption is sought to be desired, may move amendments in the Bill itself. The present Bill is drafted in view of the progressive sentiments of all communities. It is better to make some provision enabling us to provide for the future generation also without giving room to any sort of difficulty in the future. Therefore I request the honourable members of this House to consent to the principle of the Bill and permit me to refer it to a Select Committee.

Mr. Kottur Kunjukrishna Pillai: I second it.

Mr. N. Abdur Rahiman Sahib: Sir, I oppose the introduction of the Bill in its present form. There is absolutely no necessity for a general Bill like this. Though the Transfer of Property Act is not law in Travancore, the provisions of that Act are followed and acted upon wherever those provisions are in accord with justice, equity and good conscience. As such, there is no necessity for a general law like this. Simply because one case has arisen in 23 T. L. J. 1187 it does not mean that there is a demand for a law like this. In the case of my own community, it is governed by its own personal law in which there are adequate provisions in regard to bequests and transfer of property. It has also been invariably laid down by the High Court that where a community is governed by its own personal law the provisions of that personal law will be followed. One fundamental difference between the Hindu Law and the Mahomedan Law is that while in Hindu Law inheritance accrues on the birth of a person, in Mahomedan Law the right of inheritance accrues on the death of a person. Bequests to unborn persons are highly objectionable under the Mahomedan Law. Moreover the provisions of this Bill are only copied from the provisions of the Transfer of Property Act.

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Mr. Kochikal P. Balakrishnan Tampi: May I know from the honourable member whether he objects to making a law for non-Muslims in this respect?

Mr. N. Abdur Rahiman Sahib: Though there is a provision in the Bill saying that Government may by notification exempt certain communities, my point is that it must be clearly stated in the Bill, that this Bill will not affect such communities as are governed by their own personal laws. Unless there is a clear provision like that in unequivocal terms it will lead to very great difficulties. It is to avoid that, I am suggesting that it must be stated even at the very outset that it is applicable only to such communities as are not governed by their own personal laws, instead of being generally worded like this. I may urge that the Muslims may be exempted.

President: Does the honourable member mean by 'Mahomedan Law' the Mahomedan personal law or personal law generally?

Mr. N. Abdur Rahiman Sahib: Muslim personal law. The Mahomedans have got their own Islamic law and many of the provisions of this Bill are opposed to the fundamental principles of the Mahomedan law itself. As I said, many of the provisions of the Bill are taken from the Transfer of Property Act, and as there is no difficulty for following those provisions here for all practical purposes, there is no necessity for a Bill like this. Sections 6, 9, 11 and 15 of the Bill correspond to Sections 13, 16, 14 and 20 of the Transfer of Property Act.

Mr. K. K. Kuruvilla: May I know from the honourable member whether modifications are not made in the personal law if there is an imperative necessity?

Mr. N. Abdur Rahiman Sahib: When there is an imperative necessity, when practical difficulties do arise, modifications are made where there is well-established custom or when practical difficulties are experienced in the working of certain laws or when there is ambiguity in any particular matter.

Mr. Nedumangad R. Kesavan Nair: I support the introduction of this Bill. My friend Mr. Abdur Rahiman Sahib was stating that there was no necessity for the introduction of this Bill in Travancore. It might be true so far as the Mahomedans are concerned. But when a Hindu father wants to bequeath property, it follows that necessarily the children to whom he intended to bequeath the property must be in existence at the time of the bequest according to the Present law. Now, there might be cases

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[Mr. Nedumangad R. Kesavan Nair.]

when a Hindu wants to bequeath property to his unborn sons. If this Bill is not introduced, a Hindu father is precluded from doing it. My friend Mr. Narayana Aiyar invited the attention of the House to the case in 23 T. L. J. at 1187. It was a case in which a father wanted to bequeath certain properties to his unborn children. He anticipated that he would have issues and he made provison for his prospective issues to get something. The father died and subsequently the mother created an encumbrance in the property against the desire of the father and when it came up before the court the intention of the father could not be complied with because there was no provision in Travancore for bequeathing property to an unborn person. Therefore, if the spirit of a Hindu father is to be complied with after his death, such a Bill is imperative.

Mr. G. Narayana Aiyar: In regard to the observation made by the honourable member Mr. N. Abdur Rahiman Sahib about there being no necessity for such a Bill for the Muslims, I may be permitted to read the statement of objects and reasons of a similar Bill that was introduced in British India.

"The object of the present Bill is to enable Hindus and Musalmans to dispose of property by transfer *inter vivos* and by will for the benefit of unborn persons within certain limits. According to the Hindu Law as now administered in British India, a gift in favour of a person not in existence at the date of the gift is void; and so also a bequest in favour of a person not in existence at the time of the testator's death. The same is the rule of Mahomedan Law, except that, under the provisions of the Mussalmans Wakf Validating Act, 1913, it is competent to a Mahomedan to settle property for the benefit of unborn persons even in perpetuity, provided the ultimate disposition is for the benefit of charity.

2. Every lawyer familiar with the Indian Courts must have come across a large number of settlements and wills made by Hindus and Mahomedans for the benefit of their children and grandchildren. The paramount object of the settler in all these cases has been to provide not only for his children and grand-children then in existence, but also for those to be born hereafter. Instead, however, of giving effect to the settler's intention, the law as now administered completely defeats it. Even where a donor has only one child in existence at the date of the gift, and the gift is made in express terms for the benefit of all his children including those to be born hereafter, the law excludes from the benefit of all gift all children born subsequently to the date of the gift, to the entire subversion of the donor's intention. Similarly, the intention of testators to benefit by their wills their children and grandchildren not in existence at the death of the testators is also defeated. It is to remedy these evils, and to give effect to the settler's or testor's intention, that the present Bill is proposed. The sole object of the Bill is to enable the Court to carry out the

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settlor's or testator's intention, which, under the present state of the law, they are precluded from doing. At the same time, it is recognised that this can only be done within the limits allowed by the rule against perpetuity, and these limits are prescribed in clauses 4 and 5. The effect of the Bill, if passed into law, will be to enable Hindus and Mahomedans to make dispositions of their property to the same extent, and subject to the same limitations as other communities in British India".

From this it will be clear that there was a request on the part of the Muslim community also showing a desire to have a Bill on similar lines. I submit that if any member of any community wants a saving clause exempting his community from the provisions of this Bill that can be effected by means of amendments.

President: It appears to me that not much controversy is necessary on this subject because, when and if a Select Committee is appointed; in view to what has been laid down in Clause 16 it is possible for particular communities to make provision very definitely in the Bill by suitable amendments for exempting certain communities. Therefore I do not think that much discussion is necessary at this stage.

The question that the Bill be read in Council was put and carried.

The Secretary then read the title of the Bill.

Mr. G. Narayana Aiyar: I propose that the Bill be referred to a Joint Committee of both the Houses.

Mr. Kayalam Paramesvaran Pillai: Sir, Mr. Narayana Aiyar suggests that the Bill may be referred to a Joint Committee of both the Houses. In the light of the fact that the Bill is only a small one I doubt whether it should be referred to a Joint Committee.

Mr. G. Narayana Aiyar: Then I shall propose the following members to be members of the Select Committee.

Law Member.
Mr. Kottur Kunjukrishna Pillai,
" V. S. Arumukham Pillai,
" M. Govindan,
" T. Mahomed Ismail,
" P. I. Simon,
" N. V, Chacko,
" C. N. Thuppan Namputiri,
" Nedumangad R. Kesavan Nair,
" N. Abdur Rahiman Sahib,
" Kochikal P. Balakrishnan Tampi and myself.

Mr. Kottur Kunjukrishna Pillai: I second it.

The motion was put to the vote of the House and declared carried.

LIBRARY ARCHIVES Kerala Legislative Assembly

President : What is the period within which the Committee is to report?

Mr. G. Narayana Aiyar: Three months.

THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) BILL.

Mr. G. Narayana Aiyar : I beg for leave to introduce the Travancore Hindu Inheritance (Removal of Disabilities) Bill.

Mr. Nedumangad R. Kesavan Nair: I second the motion. The motion was carried.

Leave to introduce the Bill was granted.

RESOLUTIONS ON MATTERS OF GENERAL PUBLIC INTEREST.

Enquiry into the conduct of the Reserve Police stationed at Ramamangalam.

Mr. N. V. Chacko : Sir, I beg to move the following resolution :

This Council recommends to the Government to make an enquiry into the conduct of the Reserve Police stationed at Ramamangalam in the Muvattupuzha taluk with special reference to their alleged assults on subjects of His Highness the Maharaja of Travancore whom the Reserve Police casually met with on the public roads and in the shops and houses nearby while they were riding in their motor vehicle through the Aikkaranad and Chemmanad pakuthies of the Kunnatnad taluk in the after-noon of the 3rd of Kumbhom 1112.

Sir, the incident took place on the 3rd of Kumbhom 1112. Six months have now elapsed. Not only the people of Travancore but the people of Cochin also have taken up the matter. The Press in both the States have taken up this question. Public meetings were held to protest against this. In one form or other the question was raised in the last Legislature and in this Council as well.

(Mr. M. Govindan, one of the Panel of Chairmen proceeded through the centre gangway to the Presidential Chair.)

President : The honourable member will take care not to come between the speaker and myself.

(Mr. M. Govindan took the Chair.)

Mr. N. V. Chacko: If the Police want to assault people in this manner they can assault the people not only of North Travancore but also of Central and South Travancore. They can assault not only agriculturists but those engaged in commerce and other professions also.

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